(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.77-14060 Filed 5-16-77;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of the Interior

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This section is amended to show that one position of Assistant to the Under Secretary is excepted under Schedule C because the position is confidential in nature.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Bill Bohling (202–632–4533).

Accordingly, 5 CFR 213.3312(a)(46) is added to read as follows:

**§ 213.3312 Department of the Interior.**

(a) *Office of the Secretary.* * * *

(46) One Assistant to the Under Secretary.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.77-14058 Filed 5-16-77;8:45 am]

## PART 213—EXCEPTED SERVICE

### Entire Executive Civil Service

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule A all positions not in excess of GS–13, whose incumbents will implement the National Youth Conservation Corps program and are to be paid out of funds allocated under title III of the Comprehensive Employment and Training Act of 1973, as amended. Employment under this exception is not to exceed 18 months from the date that funds are authorized for this program under title III of CETA. This exception is granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: May 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3102(hh) is amended to read as follows:

**§ 213.3102 Entire Executive Civil Service.**

* * * * *

(hh) All positions not in excess of GS–13, whose incumbents will implement the National Youth Conservation Corps program and are to be paid out of funds allocated under title III of the Comprehensive Employment and Training Act of 1973, as amended. Employment under this exception is not to exceed 18 months from the date that funds are authorized for this program under title III of CETA.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.77-14111 Filed 5-13-77;10:49 am]

## Title 7—Agriculture

## CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

## PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

### Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. These amendments establish commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of the Plant Protection and Quarantine Programs performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, MD 20782, 301–436–8247.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Plant Protection and Quarantine Programs, by 7 CFR 354.1 of the regulations concerning overtime services relating to imports and exports, the administrative instructions appearing at 7 CFR 354.2, as amended, March 18, 1977 (42 FR 15055) prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further amended by adding (in appropriate alphabetical sequence) the information as shown below:

The following entry is added to the table in 7 CFR 354.2:

**§ 354.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

*Commuted traveltime allowances*

[In hours]

| Location covered | Served from— | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Add: | | | |
| * * | * * | * * | |
| Louisiana: Lake Charles. | Crowley | | 3 |
| New Mexico: Columbus. | El Paso, Tex | | 6 |
| Puerto Rico: Guanica. | Ponce | | 2 |
| Texas: | | | |
| Bergstrom AFB | San Antonio | | 3 |
| Robert Grey Army Airfield. | do | | 6 |
| * * | * * | * * | |

(64 Stat. 561; (7 U.S.C. 2260).)

It is to the benefit of the public that this instruction be made effective at the earliest practicable date. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to the foregoing amendment are unnecessary and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

NOTE.—The Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Done at Washington, D.C., this 11th day of May, 1977.

JAMES O. LEE, Jr.,
*Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.*

[FR Doc.77-14023 Filed 5-16-77;8:45 am]

## CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

## BEEF RESEARCH AND INFORMATION

### Procedure for Conduct of Referendums

CROSS REFERENCE: For a document establishing procedure for conducting referendums regarding any Beef Research and Information Order, see FR Doc. 77–14021, in the Rules and Regulations Section of this issue.

## CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

## PART 1260—BEEF RESEARCH AND INFORMATION

### Subpart—Procedure for the Conduct of Referendums in Connection With Beef Research and Information Order

AGENCIES: Agricultural Marketing Service and Agricultural Stabilization and Conservation Service USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the procedure for conducting referendums with respect to any Beef Research and Information Order or amendment issued pursuant to the Beef Research and Information Act. Such a rule is necessary because an order must be approved in a referendum among eligible beef producers before the Order can become effective. It will give beef producers notice of eligibility requirements, registration and voting procedures, challenges of eligibility, and publication of the result of each referendum.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert Cook, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–7998).

SUPPLEMENTARY INFORMATION: The Act provides that the Secretary of Agriculture shall issue a Beef Research and Information Order, or amendments thereto, applicable to producers and slaughterers of cattle to effectuate the delcared policy of the Act. The Act further provides that the Secretary shall conduct a referendum among cattle producers for the purpose of ascertaining whether the issuance of an Order is approved or favored by cattle producers. This procedure for the conduct of referendums is in accordance with the authority vested in the Secretary of Agriculture by the Act.

The proposed rules for conducting referendums were published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19885), and interested persons were invited to submit comments on the proposal by April 30, 1977.

Two changes in the proposed rules were recommended in the comments received. One suggestion was to change the 12-day voting period provided for in § 1260.201(n) to an 11-day voting period in order that the voting period for the forthcoming referendum could be scheduled during a suggested period which included the 4th of July holiday-shortened workweek. Such a change is unnecessary since § 1260.204 provides that Sundays and Federal holidays are counted in the computation of time except where the last day falls on a Sunday or holiday; then the next business day shall be the last day. Also, these rules are applicable not only to the forthcoming referendum but to all referendums held under any order or amendments issued under the Act. Therefore, it would be impractical to include special provisions to accommodate particular situations occurring in different referendums.

It was also recommended that paragraph 1260.207(b) be changed to provide that a list of registered producers be prepared on a daily basis and made available for inspection throughout the registration period in addition to a complete list of registered producers to be prepared after the registration period closes. The recommended change is adopted since it results in a more open registration procedure by making the names of registrants available to the public daily rather than only after the registration period.

The following other changes are also made to clarify or correct provisions in the proposed rules:

Section 1260.202 is added to the rules. It was inadvertently omitted in the proposed rules published for comment. The section outlines responsibilities of the Deputy Administrator, ASCS, State ASC committees, and county ASC committees for conducting referendums. This added section represents no substantive change from the proposal since the duties of the Deputy Administrator and the State and county ASC committees are stated in other provisions elsewhere in the rules.

The wording of § 1260.206(b) is changed to show that proxy registration and voting is not permitted for individual producers.

Section 1260.209(a) is changed by adding a requirement that any challenge of a person's eligibility must be made prior to the end of the voting period. This requirement is necessary to provide adequate time for resolving any challenges or appeals and compiling the final results of the referendum within the limits specified in the rules.

Since this procedure is essentially the same as the proposed rule published April 15, 1977, and an earlier effective date will not impose any additional burden on any person, good cause exists for making the procedure effective on less than 30 days notice.

Accordingly, with these changes and additions, the proposed rules (7 CFR Part 1260) are adopted as set forth below.

Issued at Washington, D.C., this May 11, 1977.

VICTOR A. SENECHAL,
*Acting Administrator, Agricultural Stabilization and Conservation Service.*

IRVING W. THOMAS,
*Acting Administrator, Agricultural Marketing Service.*

**Subpart—Procedure for the Conduct of Referendums in Connection with Beef Research and Information Order**

Sec.



AUTHORITY: (Sec. 17, Pub. Law 94–294, 90 Stat. 537 (7 U.S.C. 2916).)

### Subpart—Procedure for the Conduct of Referendums in Connection With Beef Research and Information Order

#### § 1260.200 Referendums.

Referendums for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a Beef Research and Information Order, or the amendment, continuance, termination, or suspension of such an Order, is favored by producers, shall, unless supplemented or modified by the Secretary, be conducted in accordance with this Subpart.

#### § 1260.201 Definitions.

(a) "Secretary" means the Secretary of Agriculture or any other officer or employee of the U.S. Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service.

(c) "Act" means the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and any amendments thereto.

(d) "Deputy Administrator" means the Deputy or Acting Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(e) "State ASC Committee" means the group of persons within a State designated by the Secretary to act as the State Agricultural Stabilization and Conservation committee.

(f) "County ASC Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation committee, pursuant to the regulations governing the election and functioning of the county Agricultural Stabilization and Conservation committee.

(g) "County ASCS Executive Director" means the person employed by the county ASC committee to execute the policies of the county ASC committee and be responsible for the day-to-day operation of the county ASCS office, or the person acting in such capacity.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(i) "Cattle" means live domesticated bovine quadrapeds.

(j) "Producer" means any person who owns or acquires ownership of cattle

other than one who acquires cattle solely for the purpose of slaughter: *Provided*, That a person shall not be considered to be a producer if his only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

(k) "Order" means the Beef Research and Information Order or any amendment thereto promulgated pursuant to the Act with respect to which the Secretary has directed that a referendum be conducted.

(l) "Representative Period" means a consecutive twelve-month period preceding the referendum designated by the Secretary.

(m) "Registration Period" means a 12-day period to be announced for the registration of producers desiring to vote in a referendum. The registration period shall end not less than ten calendar days prior to the first day of the voting period.

(n) "Voting Period" means a 12-day period to be announced for voting in a referendum.

**§ 1260.202 Supervision of referendum.**

The Deputy Administrator shall be in charge of and responsible for conducting each referendum in accordance with this subpart. Each State ASC committee shall be in charge of and responsible for conducting the referendum in its State. Each county ASC committee shall be responsible for conducting the referendum in its county.

**§ 1260.203 Requirements of referendum.**

No Beef Research and Information Order or amendment thereto issued under the Act shall become effective unless the Secretary determines (a) that valid ballots were cast by at least 50 percent of the eligible producers registered to vote, and (b) that the issuance of such Order is approved or favored by not less than two-thirds of the producers casting valid ballots in such referendum.

**§ 1260.204 Computation of time.**

Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action: *Provided*, That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

**§ 1260.205 Public notice.**

Advance public notice of the referendum shall be provided without advertising expense by the State and county ASCS offices by means of newspapers, television, county newsletter, county extension agents, etc. Such notice shall announce the registration requirements and other pertinent information.

**§ 1260.206 Eligibility.**

(a) *Eligible Producer.* Each person who was a producer at any time during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy Registration and Voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any producer entity (other than an individual producer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer entity shall certify that he is authorized by such entity to take such acion.

(c) *Joint and Group Interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of cattle as a producer entity shall be entitled to only one vote: *Provided, however*, That any member of a group may register to vote as a producer if he is an eligible producer separate from the group.

**§ 1260.207 Registration.**

(a) *Registration procedure.* Each producer desiring to vote in the referendum must register during the registration period with the county ASCS office serving the county in which his farm or ranch headquarters is located. An absentee producer who does not have a local headquarters may register and vote in any county where his cattle are located, but shall register and vote in only one such county. To register, a producer must complete a registration card, Form ASCS–151, during the registration period. Registration may be in person or by mail. A producer who wishes to register by mail may request the county ASCS office to mail him a registration card. A registration card shall be considered received during the registration period if (1) it was delivered in person to the county ASCS office prior to the close of business on the final day of the registration period, or (2) it was postmarked not later than midnight of the final day of the registration period, and was received in the county ASCS office prior to the close of business on the fourth day after the close of the registration period.

(b) *List of registered producers.* A list of registered producers shall be prepared and posted daily in a conspicuous public location at the county ASCS office during the registration period. A final list shall be posted on the fifth day after the close of the registration period. The list shall include all persons who submitted a valid registration card in a timely manner.

**§ 1260.208 Voting.**

(a) *Facilities and ballot box.* Each county ASCS office shall provide (1) adequate facilities and space to permit producers to mark their ballots in secret and (2) a sealed ballot box which shall be kept under observation during office hours and secured at all times until the ballots are counted.

(b) *Voting.* Voting may be in person or by mail. A producer wishing to vote by mail may request the county ASCS office to mail him a ballot. Ballots will be issued only to eligible cattle producers who have registered to vote. Ballots will not be provided nor accepted prior to the voting period. Each registered cattle producer voting shall obtain and cast his ballot on Form ASCS–151A with the county ASCS office where he registered to vote. The ballot shall be marked to indicate "yes" or "no" and must be signed by the producer. Producers voting in person shall place their own ballots in the ballot box. Ballots received by mail shall be placed promptly in the ballot box.

**§ 1260.209 Challenge of eligibility.**

(a) *Who may challenge.* A person's eligibility to register and vote may be challenged by any person. The county ASCS executive director shall review all registrations and promptly challenge any registrant who appears to be ineligible. Any challenge of a person's eligibility to register and vote must be made prior to the end of the voting period.

(b) *Determinations of challenges.* Any person whose eligibility to register and to vote has been challenged must prove to the satisfaction of the county ASCS executive director that he was a producer during the representative period. Records such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is a producer. The county ASCS executive director shall make his determination concerning the eligibility of a producer who has been challenged as soon as practicable, and in all cases before the opening of the ballot box.

(c) *Challenged ballot.* A person whose eligibility to register or to vote has been challenged but not resolved by the county ASCS executive director or by the county ASCS committee, if on appeal, may be allowed to cast a ballot, but such ballot shall be considered a challenged ballot for the purpose of the referendum until a resolution of the challenge has been made. A challenged ballot shall be determined to have been resolved if no appeal is taken from the determination of the county ASCS executive director within the time allowed for appeal or there has been a determination by the county ASC committee after appeal.

(d) *Appeal.* Appeal from a decision by the county ASCS executive director on the eligibility of a person to register or to vote must be made to the county ASC committee within three business days after notification of such decision. An appeal shall be determined by the county ASC committee as soon as practicable, but in all cases not later than 5 days after the opening of the ballot box.

**§ 1260.210 Receiving ballots.**

A ballot shall be considered to have been received during the voting period (a) if it was cast in the county ASCS office prior to the close of business on the final day of the voting period, or (b) if mailed, the ballot was postmarked not later than midnight on the final day of the voting period and received in the

county ASCS office prior to the close of business on the fourth day after the close of the voting period.

**§ 1260.211 Canvassing ballots.**

(a) *Counting the Ballots.* As soon as possible after opening of the county ASCS office on the fifth day after the close of the voting period, employees of the county ASCS office shall open the ballot box and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible producers casting valid ballots, (2) number of producers favoring the order, (3) number of producers not favoring the order, (4) the number of challenged ballots deemed invalid, and (5) the number of spoiled ballots.

(b) *Spoiled Ballots.* Ballots shall be considered as spoiled ballots when they are unsigned, mutilated, or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this Subpart or as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation or see how any person voted in the referendum.

**§ 1260.212 County ASCS office report.**

(a) *Preliminary report.* The county ASCS office shall notify the State ASCS office by telephone, telegraph, or messenger as to the preliminary results of the referendum as soon as possible. Such report shall also include the total number of eligible producers that registered to vote in the referendum. Each county ASCS office may release the unofficial results of the referendum in its county after the report has been given to the State ASCS office.

(b) *Final report.* Within seven days after the opening of the ballot box, each county ASCS office shall transmit a written summary certified by the county ASCS executive director of the final results of the referendum in its county to the State ASCS office. Any appeal concerning a producer's eligibility shall be resolved by the county ASC committee prior to the date of the final report. A copy of the summary shall be posted for 30 days in the county ASCS office in a conspicuous place accessible to the public and a copy shall be kept on file in the county ASCS office for a period of at least 12 months.

**§ 1260.213 State ASCS office report.**

(a) *Preliminary report.* Each State ASCS office shall send to the Deputy Administrator by telegraph as soon as possible a summary of the preliminary results of the referendum received from the county ASCS offices within its State. Such report shall also include the total number of eligible producers that registered to vote in the referendum. Each State ASCS office may release the unofficial results of the referendum in its State after its report has been sent to the Deputy Administrator.

(b) *Final report.* Within ten days after the opening of the ballot boxes in the county ASCS offices each State ASCS office shall transmit to the Deputy Administrator a written summary of the final results of the referendum received from the county ASCS offices within the State. Such summary shall be prepared in triplicate and certified by the State ASCS executive director. The orginal and one copy of the summary shall be sent to the Deputy Administrator. One copy of the summary shall be maintained in the State ASCS office where it shall be available for public inspection for a period of not less than 12 months.

**§ 1260.214 Results of the referendum.**

(a) The Deputy Administrator shall prepare and submit to the Secretary or his designee a report of the results of the referendum. The official results of the referendum shall be published in the FEDERAL REGISTER. State summaries and related papers shall be available for public inspection in the office of the Deputy Administrator, Programs, ASCS, U.S. Department of Agriculture, Room 243–W, Administration Building, Washington, D.C.

(b) If the Deputy Administrator or the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

**§ 1260.215 Disposition of ballots and records.**

The county ASCS executive director shall place the registration cards, list of registrants, eligible voter lists, voted ballots, challenged registration cards and challenged ballots found to be ineligible, spoiled ballots, and county summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the county ASCS executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

**§ 1260.216 Suspension and termination of order.**

The Secretary of Agriculture may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cattle producers voting in the referendum approving the Order, to determine whether such producers favor the termination or suspension of the Order, and he shall suspend or terminate such Order six months after he determines that suspension or termination of the Order is approved or favored by a majority of the producers voting in such referendum who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production of cattle, and who produced more than 50 percent of the volume of cattle produced by the producers voting in the referendum.

**§ 1260.217 Instructions and forms.**

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

[FR Doc.77-14021 Filed 5-16-77;8:45 am]

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## Title 9—Animals and Animal Products

## CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

### SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

## PART 73—SCABIES IN CATTLE

### Release of Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Webster County in Nebraska from areas quarantined because of cattle scabies. Surveillance activity indicates that cattle scabies no longer exists in the area quarantined. No areas in the State of Nebraska remain under quarantine.

EFFECTIVE DATE: May 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goats, Equine, and Ectoparasites Staff, United State Department of Agriculture, Room 737, 6505 Belcrest Road, Federal Building, Hyattsville, Maryland 20782 (301–436–8322).

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Webster County in Nebraska from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded area.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended in the following respect:

**§ 73.1a [Amended]**

In § 73.1a, paragraph (b)(1) relating to the State of Nebraska is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19140.)

The amendment relieves restrictions no longer deemed necessary to prevent

the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 12th day of May 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

R. I. BROWN,
*Acting Deputy Administrator, Veterinary Services.*

[FR Doc.77-14055 Filed 5-16-77;8:45 am]

## Title 12—Banks and Banking

## CHAPTER II—FEDERAL RESERVE SYSTEM

### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0099]

### PART 265—RULES REGARDING DELEGATION OF AUTHORITY

### Revocation of Certain Previous Delegations Regarding Personnel, Buildings, etc.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate performance of certain of its functions, the Board of Governors revokes certain previous delegations regarding personnel matters, building matters, and other miscellaneous delegations.

EFFECTIVE DATE: May 9, 1977.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., 20551 (202-452-3257).

SUPPLEMENTARY INFORMATION: The Board of Governors has amended its Rules Regarding Delegation of Authority by revoking certain functions previously delegated to Board members.

The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date, are not followed in connection with the adoption of these amendments, because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirements of that section.

Effective May 9, 1977, 12 CFR 265.1a is amended by deleting paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b) respectively. (12 U.S.C. 248(k))

Board of Governors of the Federal Reserve System, May 9, 1977.

THEODORE E. ALLISON,
*Secretary of the Board.*

[FR Doc.77-14019 Filed 5-16-77;8:45 am]

## Title 17—Commodity and Securities Exchanges

## CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13508, IC-9753; File No. S7-654]

### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

### Securities Confirmations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule prescribes the delivery and disclosure requirements for confirmation slips sent to customers by brokers and dealers when they buy securities for or from customers or sell securities for or to those customers. The rule describes the situations in which confirmations must be sent and the information they must contain. It revises the confirmation requirements under the federal securities laws to provide investors with fundamental information pertaining to securities transactions consonant with the costs of providing that information.

EFFECTIVE DATE: January 1, 1978, except for paragraphs (b), (c), (d) and (e) as to which the effective date is June 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Steele, Esq., Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-8746.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of Rule 10b-10 (17 CFR 240.10b-10) under the Securities Exchange Act of 1934 (the "Act")[1] and the intention to rescind Rule 15c1-4 (17 CFR 240.15c1-4). Rule 10b-10 will make it unlawful for any broker or dealer to effect transactions in securities for or with a customer without making certain written disclosures to that customer.[2]

Rule 10b-10 will become effective on January 1, 1978, with the exception of paragraphs (b), (c), (d) and (e) of the rule, which will become effective on June 1, 1977. Paragraph (b) provides for the optional use of quarterly statements in lieu of immediate confirmations in connection with certain regular investment plans.[3]

The Commission also expects to publish a release shortly setting forth certain proposed revisions to Rule 10b-10 or separate rules relating to, among other things, the provisions contained in Rule 10b-10 as originally proposed, with regard to "riskless principal" transactions, "special remuneration" in connection with principal transactions,[4] and the use of quarterly statements in lieu of immediate confirmations with respect to certain "investment company plans."[5] Those further provisions, together with the provisions adopted today, are expected to supersede Rule 15c1-4 in its entirety and the Commission currently intends to rescind that rule upon taking final action on the proposed additions to Rule 10b-10.

By adopting paragraphs (b), (c), (d) and (e) of Rule 10b-10 effective June 1, 1977, the Commission has sought to afford broker-dealers an immediate opportunity to implement the "periodic plan" provisions of paragraph (b). With respect to confirmations not covered by paragraph (b), however, brokers and dealers are urged to review the amendments to be proposed shortly before making major adjustments in confirmation preparation procedures.

#### BACKGROUND AND PURPOSE

As the Commission noted in proposing to adopt Rule 10b-10, it has undertaken a general review of the requirements under the federal securities laws which have imposed a duty upon brokers, dealers and municipal securities dealers to make written disclosures to their customers at or before completion of a transaction. The so-called "confirmation requirements" have, for the most part, been contained in section 11(d)(2) of the Act[6] and Rule 15c1-4.[7]

Numerous considerations have led the Commission to undertake a general review at this time. Business practices within the securities industry have been changing or have changed since the development of the basic confirmation requirements. In recent years, for ex-

[1] 15 U.S.C. 78a et seq.

[2] The proposal to adopt Rule 10b-10 was announced in Securities Exchange Act Release No. 12806 (Sept. 16, 1976). See 41 FR 41432 (Sept. 22, 1976) and Investment Company Act Release No. 9450 (Sept. 16, 1976). Interested persons were invited to submit comments, and 31 comment letters were received. Rule 10b-10, as adopted, has been revised for the most part on the basis of the comments received.

[3] See discussion below under Confirmation Delivery Requirements under Rule 10b-10.

[4] See paragraph (a)(3)(ii) of Rule 10b-10 as proposed in Securities Exchange Act Release No. 12806 (Sept. 16, 1976).

[5] See paragraph (d)(3) of Rule 10b-10 as proposed in Securities Exchange Act Release No. 12806 (Sept. 16, 1976).

[6] 15 U.S.C. 78k(d)(2).

[7] See also Securities Exchange Act Rules 15c1-5 and 15c1-6 (17 CFR 240.15c1-5 and c1-6) and *Affiliated Ute Citizens of Utah* v. *United States*, 406 U.S. 128 (1972); *Chasins* v. *Smith, Barney and Co.*, 438 F. 2d 1167 (2d Cir. 1970); and *Cant* v. *A. G. Becker & Co., Inc.*, 374 F. Supp. 36 (N.D. Ill. 1974). Confirmation rules have also been developed by various self-regulatory organizations and their members are required to comply with those requirements as well as with the requirements under the federal securities laws.

ample, broker-dealers and others have sought to attract increased participation by individual investors in the securities markets through regular or periodic investment plans. Employee stock purchase plans, dividend reinvestment plans and systematic plans for the purchase of investment company securities did not exist when the confirmation requirements were originally written.

The securities markets are also undergoing changes and the Securities Acts Amendments of 1975[8] reflect those changes in considerable measure. In enacting the 1975 Amendments, Congress substantially revised the Act to accomplish numerous purposes, including the development of a "national market system." In that connection, the Congress found, among other things, that it was in the public interest and appropriate for the protection of investors to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets[9] and to assure equal regulation of all markets for securities qualified for trading in a national market system and of the brokers and dealers effecting transactions in such securities.[10] In addition, the Congress provided that persons effecting transactions in municipal securities would be subject for the first time to various provisions of the Act and the rules thereunder[11] and mandated the creation of the Municipal Securities Rulemaking Board (the "MSRB") to propose and adopt, subject to Commission approval, rules to effect the purposes of the Act with respect to transactions in municipal securities.[12]

In addition, changes are occurring in the types of market participants acting as intermediaries between investors and the securities markets. Under the federal securities laws, many of those participants are characterized as "brokers," "dealers," "banks" or "investment advisers." At the same time, those who are characterized other than as "borkers" or "dealers" (but who, nonetheless, deal directly with investors) are becoming more integrally involved in the process of effecting transactions in securities. Not all of those persons have been subject to Commission regulation and some have been subject to varying Commission regulation. A person who is a "broker"[13] or "dealer"[14] under the Act is, of course, required to comply with applicable provisions of the Act and the rules thereunder. A person who is characterized as an "investment adviser,"[15] on the other hand, is subject to different regulation. A "bank"[16] is excluded from the statutory definitions of "broker," "dealer" and "investment adviser." A number of commentators drew attention to the variations in the regulatory pattern and made suggestions that the coverage of the confirmation rule be extended. While the Commission has decided at this time to adhere to the traditional pattern of requiring only brokers and dealers to comply with the confirmation rule, it will continue to evaluate confirmation procedures with reference to the fundamental transactional information which should be made available to all investors.

### Persons Subject to Rule 10b–10

#### BROKERS AND DEALERS

Rule 10b–10 applies to brokers and dealers. Section 11(d)(2) has since 1934 required a broker-dealer to disclose whether he has acted as a dealer for his own account or as a broker for the customer or some other person in effecting a transaction,[17] and Rule 15c1–4 has since 1937 imposed disclosure requirements upon brokers and dealers effecting transactions otherwise than on a national securities exchange. Rule 10b–10 will, however, apply regardless of the manner in which a broker-dealer conducts its business or the marketplace where transactions are effected.

#### MUNICIPAL SECURITIES

In 1976 the Commission amended Rule 15c1–4, effective July 5, 1976, to require a bank municipal securities dealer to disclose whether it has acted as agent or as principal in effecting a transaction in municipal securities.[18] Shortly after that amendment to Rule 15c1–4 became effective and shortly before the Commission proposed Rule 10b–10, the MSRB filed with the Commission a confirmation rule (MSRB rule G–15) to require all brokers, dealers and municipal securities dealers effecting transactions in municipal securities to disclose to their customers information pertaining to each transaction.[19] In proposing to apply Rule 10b–10 to transactions in municipal securities, the Commission called attention to MSRB rule G–15.[20]

Some who commented on Rule 10b–10, including the MSRB, urged the Commission to consider whether it was necessary for Rule 10b–10 to apply to transactions in municipal securities in view of the proposed MSRB confirmation rule. Generally, proposed MSRB rule G–15 would provide for more detailed disclosures relating specifically to the nature of the security being purchased or sold. Certain additional disclosures were, however, required by proposed Rule 10b–10. For example, as proposed, it would have required certain dealers to disclose their mark-up or mark-down (i.e, remuneration) in connection with "riskless" principal transactions. As noted above, the Commission intends to publish shortly revised proposals in that regard.

In urging the Commission to consider whether Rule 10b–10 need apply to transactions in municipal securities, some commentators referred to the expertise of the MSRB and its special role under the Federal securities laws. The MSRB was established by the Commission, at the direction of Congress,[21] to propose and adopt rules to effect the purposes of the Act with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers.[22] The legislative history of the 1975 Amendments makes clear the desirability of taking "into account the uniqueness of the (municipal securities) industry,"[23] so long as investors are adequately protected. Accordingly, the Commission has determined to withdraw, at this time, the proposal to provide confirmation requirements applicable to municipal securities transactions in Rule 10b–10. The Commission anticipates that further consideration will be given to applying to the municipal securities markets the types of disclosures included or soon to be proposed for inclusion in Rule 10b–10. All brokers, dealers and municipal securities dealers should recognize that the requirements of Rule 15c1–4(a) remain in effect until January 1, 1978, and should anticipate that a comprehensive confirmation rule applicable to municipal securities will also be in effect by that date.

### Confirmation Delivery Requirements Under Rule 10b–10

Paragraph (a) of Rule 10b–10 requires, as did Rule 15c1–4, that a written statement be given or sent to a customer at or

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[8] Pub. L. No. 94–29 (June 4, 1975) (the "1975 Amendments").

[9] See Section 11A(a)(1)(C)(ii) of the Act (15 U.S.C. 78k–1(a)(1)(C)(ii)).

[10] See Section 11A(c)(1)(F) of the Act (15 U.S.C. 78k–1(c)(1)(F)).

[11] See generally Section 15B of the Act (15 U.S.C. 78o–4).

[12] See, e.g., Sections 15B(b)(2) and 15B(c)(1) of the Act (15 U.S.C. 78o–4(b)(2) and (c)(1)).

[13] Section 3(a)(4) of the Act, 15 U.S.C. 78c (a)(4).

[14] Section 3(a)(5) of the Act, 15 U.S.C. 78c (a)(5).

[15] See section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(11).

[16] Section 3(a)(6) of the Act, 15 U.S.C. 78c (a)(6) and section 206(a)(2) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2 (a)(2).

[17] Section 11(d)(2) applies to any "member of a national securities exchange who is both a dealer, and a broker, (and) any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise."

[18] See Securities Exchange Act Release No. 12468 (May 20, 1976), 41 FR 22820 (1976).

[19] See Securities and Exchange Commission File No. SR–MSRB–76–9. The rules of the MSRB are adopted by the MSRB subject to Commission approval pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

[20] See Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432 (Sept. 22, 1976).

[21] See section 15B(b)(1) of the Act (15 U.S.C. 78o–4(b)(1)).

[22] See section 15B(b)(2) of the Act (15 U.S.C. 78o–4(b)(2)). It is a violation of the Act if a broker, dealer or municipal securities dealer effects a transaction in a municipal security in contravention of a rule of the MSRB. See section 15B(c)(1) of the Act (15 U.S.C. 78o–4(c)(1)). Accordingly, a confirmation rule adopted by the MSRB and approved by the Commission would assume a status under the Federal securities laws that is substantially equivalent to any confirmation rule the Commission may adopt.

[23] Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 48 (1975).

before completion of a transaction. "Customer" and "completion of the transaction" are respectively defined in paragraphs (d)(1) and (d)(2) of the rule.

Proposed Rule 10b–10, however: *Provided*, That in lieu of the written statement required by paragraph (a), a monthly statement could be used in connection with transactions effected pursuant to a "periodic plan" and a quarterly statement could be used with respect to an "investment company plan."[24] The proposals with respect to periodic plans have been modified somewhat in Rule 10b–10 as adopted. The Commission intends to revise the provisions with respect to investment company plans in the release to be published shortly.

PERIODIC PLANS

Proposed Rule 10b–10 defined a "periodic plan" as a customer's written authorization to a broker to purchase or sell for his account a specific security or securities (other than investment company securities), in specific amounts (calculated in security units or dollars), at specific time intervals. That definition has not been substantially altered and appears in paragraph (d)(4) of Rule 10b–10, as adopted.

Some commentators objected to the requirement that transactions effected pursuant to a periodic plan must be agency transactions. It was observed that small transactions, such as those effected for dividend reinvestment plans, may involve odd-lot transactions which some broker-dealers have recently begun effecting on a principal basis. The Commission, however, is concerned that there may be risks to investor protection inherent in further relaxing the confirmation delivery requirements to permit a broker-dealer to effect transactions as a principal (and, therefore, at prices determined by the broker-dealer) without providing for reasonably current reporting to the customer under the confirmation rule.[25]

The Commission was also urged to permit the use of quarterly rather than monthly statements in connection with transactions effected pursuant to a periodic plan. Quarterly statements have been permitted by the Commission in connection with various plans for the purchase of certain investment company shares,[26] and the Commission has revised the rule, as adopted, to permit the use of quarterly statements in connection with periodic plans as well. In addition, Rule 10b–10, as adopted, will permit the delivery of quarterly statements in bulk to a person designated by the customer for distribution to the customer. A similar provision was also previously permitted in the case of purchases of investment company securities pursuant to a "group plan" under Rule 15c1–4, and the Commission has concluded that such a procedure would also be appropriate under a "periodic plan."

INVESTMENT COMPANY PLANS

In 1974, the Commission amended Rule 15c1–4 by adding paragraph (b) to provide for the use of quarterly statements in connection with certain transactions in securities issued by open end investment companies or unit investment trusts registered under the Investment Company Act of 1940 ("investment company securities"). Proposed Rule 10b–10 was drafted to restate the substance of that 1974 amendment. The Commission had, however, received indications that the quarterly procedure was not being used and accordingly solicited comments to assist it in determining what, if any, revisions would be appropriate.[27]

A number of comments confirmed that the quarterly procedure was not being used. A survey by the National Association of Securities Dealers, Inc. (the "NASD") of its members which act as principal underwriters for investment companies indicated that the quarterly statement procedure was not used because of various business problems. For example, many principal underwriters believe that the costs associated with establishing and maintaining dual confirmation systems (e.g., segregating those accounts for which a quarterly statement could be used), exceed the possible cost savings. Some also believed that for business reasons immediate confirmations were generally preferable. On the other hand, some who commented directly on proposed Rule 10b–10 and some who responded to the NASD survey indicated that various requirements contained in Rule 15c1–4 (and proposed Rule 10b–10) unnecessarily restricted the use of quarterly statements.

As noted above, the Commission intends to propose revised requirements with respect to the use of quarterly statements for investment company plans; and until such new requirements are proposed and finally adopted, the provisions of Rule 15c1–4(b) will continue in effect.

SUMMARY OF DISCLOSURE REQUIREMENTS UNDER RULE 10b–10

As now adopted, Rule 10b–10 provides for the written disclosure of certain material information[28] pertaining to a transaction effected by a broker or dealer for or with a customer. The rule is structured to require different disclosures depending upon whether the broker-dealer has acted as agent or as principal in effecting transactions.

DISCLOSURES TO BE MADE BY ALL BROKERS AND DEALERS

Paragraph (a)(1) of the rule requires disclosure of the capacity in which a broker or dealer acts in effecting a transaction. Since, in some instances, a broker may act as agent for someone other than the customer to whom the confirmation is to be sent, the rule has been revised to reflect that fact.

Paragraph (a)(2) of the rule requires disclosure of the date and time of the transaction (or the fact that the time of the transaction will be furnished upon request) and the identity, price and number of shares or units (or principal amount) of the security purchased or sold by the customer.[29]

TIME OF A TRANSACTION

A number of comments were received with regard to the existing requirement in Rule 15c1–4 that the time of the transaction be disclosed or made available upon request and the modification of that requirement proposed in Rule 10b–10. Time of a transaction was argued not to be material in the context of transactions in debt securities generally or in the context of certain transactions in securities issued by investment companies. Also the Commission was urged to clarify the meaning of "time of a transaction."

With respect to transactions in debt securities, the Commission believes that the time of a transaction may on occasion be of sufficient materiality to warrant its disclosure upon request and, since the time of a transaction is required to be maintained under Commission and MSRB recordkeeping rules,[30] there appears to be little burden created solely

[24] As the Commission noted in proposing Rule 10b–10, the rule is not intended to require a broker dealing with the trustee of a plan to deliver statements to plan participants where the trustee is the shareholder of record of the securities being purchased or sold. Paragraph (a) of the rule would require such a broker only to deliver a confirmation to the plan trustee.

[25] These considerations do not appear to apply equally to "investment company plans" as defined in paragraph (d)(3) of proposed Rule 10b–10.

[26] See Rule 15c1–4(b).

[27] See Securities Exchange Act Release No. 11025 (Sept. 24, 1974), 39 FR 35345 (Oct. 1, 1974).

[28] The rule does not attempt to set forth all possible categories of material information to be disclosed by broker-dealers in connection with a particular transaction in securities. Rule 10b–10 only mandates the disclosure of information which can generally be expected to be material. Of course, in particular circumstances, additional information may be material and disclosure may be required. See, e.g., Securities Exchange Act Rules 15c1–5 and 15c1–6.

[29] As proposed, Rule 10b–10 would have required disclosure of "title" rather than "identity" of the security. Some commentators believed that the term "title" suggested that broker-dealers must employ the full corporate title as set forth in the issuer's certificate of incorporation or debt instrument. It was suggested that the term "identity" would allow greater flexibility without sacrificing the purpose of the disclosure, and the Commission has accepted that suggestion.

[30] See Securities Exchange Act Rule 17a–3(a) (6) and (7) (17 CFR 240.17a–3(a) (6) and (7)). See also MSRB rule G–8.

by advising customers that information on time is available on request.[23]

With respect to time of a transaction generally, it was suggested that Rule 10b–10 should be drafted to conform to the requirements of the Commission's recordkeeping rule, Rule 17a–3 (17 CFR 240.17a–3). That rule generally requires brokers and dealers to maintain a record of the "time of execution" of a transaction "to the extent feasible."[24] The Commission believes that the confirmation and recordkeeping requirements do not in fact differ with respect to the time of a transaction and paragraph (d)(3) of Rule 10b–10 defines the phrase "time of a transaction" to reflect that view.

PRICE OF A SECURITY

In proposing Rule 10b–10, the Commission noted that, under certain circumstances, it was not thought to be inappropriate for broker-dealers to send confirmations which reflect the average price where an order has been effected in several transactions.[25] For example, it was observed that a person exercising investment discretion with respect to several different accounts may decide to purchase or sell a particular security for one or more of such accounts. Because a substantial block may be involved, the purchase or sale of the security for all such accounts may be effected in several transactions over a reasonable period of time and, therefore, at varying prices. The question then arose as to whether the person exercising investment discretion should seek some basis for allocating particular purchases and sales to particular accounts, even though the investment decision for all such accounts was made simultaneously, or whether all such accounts would be more appropriately treated pari passu by attributing to each account an average price paid or realized for the series of transactions required to effect the overall purchase or sale. Under the circumstances described, it generally would not appear inappropriate for a broker to prepare and send confirmations which reflect the average price while making appropriate disclosures as to the overall series of transactions.

While several commentators suggested that a specific procedure be prescribed in the text of Rule 10b–10, it could be that any such formalization of the procedure might, at this juncture, prove premature and overly restrictive. Nevertheless, the Commission concurs generally with the view that an average price confirmation procedure would not be inappropriate (and would not in and of itself raise questions under either Rule 15c1–4 or Rule 10b–10) when (1) the order has been placed by a person known to the broker to have investment discretion with respect to the customers on whose behalf the order has been given, (2) the order is executed on an agency basis, and (3) the confirmations disclose that the price stated is an average price and that the actual transactional data is available on request.[26]

DISCLOSURES BY A BROKER-DEALER ACTING AS AGENT

Paragraph (a)(3) of Rule 10b–10 requires any broker-dealer effecting transactions in an agency capacity to make certain additional disclosures. As described below, the Commission has made certain technical revisions to this paragraph of Rule 10b–10.

OTHER PARTIES TO A TRANSACTION

Paragraph (a)(3)(i) requires disclosure of the name of the person from whom the security was purchased or to whom it was sold for the customer or that such information is available on request. In cases where a broker effects a transaction for a customer with another broker-dealer (who may in turn have been representing a third party) the rule requires disclosure of the name of that broker-dealer and does not obligate a broker to obtain information as to the capacity in which another broker-dealer was acting or the identity of any third party.

REMUNERATION

Paragraph (a)(3)(ii) of the Rule requires disclosure of the remuneration to be paid by the customer, and paragraph (a)(3)(iii) requires disclosure of the source and amount of any other remuneration[27] to be received by the broker in connection with the transaction. Paragraph (a)(3)(iii), however, alternatively permits, in most instances, a broker to state that the source and amount of other remuneration is available on request. As proposed, the alternative was subject to the proviso that the broker was not exercising investment discretion (as defined by section 3(a)(35) of the Act[28]) on behalf of such customer, or in the case of a purchase was not participating in a distribution, or in the case of a sale was not participating in a tender offer in connection with the transaction. A number of comments were received concerning the requirement to disclose on the confirmation the source and amount of remuneration in those three situations. While one commentator called the proposal a "sensible accommodation of competing considerations," others asserted that the source and amount of other remuneration should be required to be disclosed only on request regardless of the circumstances surrounding the transaction.

In proposing Rule 10b–10, the Commission noted that a number of persons had stated that there were practical difficulties in reporting on a confirmation the source and amount of remuneration paid or to be paid by someone other than the customer receiving the confirmation. At the same time, the Commission observed that dual agency representation presents a potential for abuse since there is a prima facie problem in representing fairly the rights of parties having conflicting interests. The three situations covered by the proviso represent either situations of special trust and confidence (where the broker is exercising investment discretion) or situations (distributions and tender offers) where the remuneration to be received may be anticipated, in many cases, to be substantially larger than might be customary in typical brokerage transactions, in which the difficulties inherent in a dual agency may be substantially less. Some commentators stated that the meanings of the terms "distribution" and "tender offer" were not clearly defined under the federal securities laws and that in any event other remuneration may be disclosed in a prospectus or other documents delivered to a customer.[29]

One alternative would be to rely solely on the general agency disclosure requirement with respect to source and amount of other remuneration set forth in Rule 15c1–4 since 1937. Nevertheless in view of the strong representations that have been made as to the administrative difficulties involved in providing disclosure

[23] With respect to investment company securities, it was observed that for those securities which are priced pursuant to Rule 22c–1 (17 CFR 270.22c–1) under the Investment Company Act of 1940, 15 U.S.C. 80a et seq., time (as opposed to date) of a transaction is not relevant. That rule requires pricing to be based on net asset value computed not less frequently than once daily as of the time of the close of trading on the New York Stock Exchange. With respect to the securities of investment companies the price of which is calculated pursuant to Investment Company Act Rule 22c–1, "time of transaction" for purposes of Rule 10b–10 may be treated as the time at which the price is required to be computed.

[24] See also Securities Exchange Act Release No. 3040 (Oct. 13, 1941), where it is stated, "the phrase 'to the extent feasible' was intended to be applicable only in exceptional circumstances where it might be actually impossible to determine the exact time of execution."

[25] See Securities Exchange Act Release No. 12806 (Sept. 16, 1976).

[26] See Kidder, Peabody & Co. Incorporated (available April 18, 1976).

[27] Questions were raised as to disclosure of remuneration where a transaction might be viewed as having multiple parties. For example, if the broker represented a seller offering 1,000 shares of a security and also represented two purchasers who each decided to purchase 500 shares of that security would it be necessary to disclose to each purchaser the compensation received from the other? In those circumstances, viewed solely from the perspective of one of the purchasers, it would be appropriate to consider the other purchaser to have effected a separate transaction. That conclusion could not, of course, be reached with respect to the seller who, in the example given, participated in both transactions.

[28] 15 U.S.C. 78c(a)(35).

[29] The term "distribution," of course, appears in other disclosure rules; see, e.g., Securities Exchange Act Rule 15c1–6.

of the type required by Rule 15c1-4,[38] the Commission has attempted to reach an accommodation that both permits the broker-dealer community to achieve greater efficiencies in transacting and adequately protects investors. Accordingly, the basic thrust of the proviso to paragraph (a)(3)(iii) has been retained, but some modifications have been made.

As adopted, Rule 10b-10 permits the broker to state on the confirmation that the source and amount of other remuneration is available on request except in two situations. When the customer has purchased the security in a transaction which is part of a distribution in which the broker is participating or when the customer has sold the security in response to a tender offer in which the broker is acting as a so-called "soliciting dealer," Rule 10b-10 requires disclosure of the source and amount of any remuneration received from any person.

The disclosure requirement in the case of transactions on behalf of an account over which the broker exercises investment discretion has been deleted in large part because the circumstances which are most likely to raise questions concerning a broker's impartiality, regardless of whether he is exercising investment discretion, would appear to occur in the case of distributions and tender offers.[39]

While the proviso, even as modified, may not provide the definiteness sought by many commentators, it does permit substantial additional flexibility as compared to the requirements of Rule 15c1-4. On the one hand, in the case of ordinary brokerage transactions, no disclosure on the confirmations is required as to the remuneration paid by the other side. On the other hand, in the case of a transaction effected as part of a "special offering," [40] or otherwise involving special selling efforts, it is apparent that disclosure is required.[41] The Commission anticipates that the proviso in modified form could substantially solve the asserted practical problems encountered in casual trading without creating unnecessary risks to investor protection.[42]

### DISCLOSURES BY A BROKER-DEALER ACTING AS PRINCIPAL

Paragraph (a)(3)(ii) of Rule 10b-10, as originally proposed, set forth various disclosures to be made by any broker, dealer, or municipal securities dealer effecting a transaction, as principal, with a customer. The Commission has determined not to retain those requirements in the form proposed in Rule 10b-10 as adopted. In light of certain of the comments received, however, the Commission currently intends to revise certain of those proposals and to republish them.

## MISCELLANEOUS MATTERS

### CUSTOMER REQUESTS FOR INFORMATION

Various provisions of Rule 10b-10, as proposed and as adopted, offer broker-dealers the option of disclosing certain information on the confirmation or stating thereon that the information is available on request. As proposed Rule 10b-10 would have required such requests to be answered within five business days. A number of persons stated that the rule should be more specific as to how and when requests are to be made and that under some circumstances five days would not be sufficient time to answer, particularly if the request related to a transaction that occurred a month or more before the request.

In response to the comments received, the Commission has modified somewhat the requirements for customer requests for information. Paragraph (c) of the rule, as adopted, provides that a broker-dealer shall give or send requested information to a customer within five business days of the receipt of information except in the case of requests for information pertaining to a transaction effected more than 30 days before the request; in that case, the response must be given or sent within 15 business days. Furthermore, the rule generally specifies that requests for information should be written (although broker-dealers may, of course, respond to oral requests if they wish to do so).

### REQUESTS FOR EXEMPTIONS

Several commentators briefly discussed circumstances under which the confirmation delivery or disclosure requirements, as set forth in proposed Rule 10b-10, might be further modified. For example, one commentator suggested that simplified confirmation requirements could be appropriate in connection with transactions in "money market" investment company securities. Money market investment companies permit investors to place funds, not otherwise invested, in securities on a short term basis. Some investors may, for example, desire to invest, on an automatic basis, the proceeds from the sale of securities in a money market investment company pending a determination on long term reinvestment. The Commission believes that the commentators may be correct in suggesting that there could be a basis, in very limited circumstances, for making particular adjustments to the requirements of Rule 10b-10. The Commission does not, however, currently believe it would be appropriate to attempt to anticipate all such circumstances in drafting Rule 10b-10. A new paragraph (e) has, however, been inserted in the Rule to provide that the Commission may exempt any broker or dealer from the requirements of Rule 10b-10 with respect to specified transactions or classes of transactions. Paragraph (e) is not intended to supplant the Commission's interpretive or no-action procedures; it is intended to provide an opportunity to make adaptations in the general provisions of Rule 10b-10 in limited circumstances and upon the substitution of alternative procedures which are adapted to implement adequately the investor protection purposes of the rule.

## STATUTORY BASIS

The Securities and Exchange Commission acting pursuant to the Act, and particularly sections 3, 9, 10, 11, 15, 17,

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[38] On several occasions, since early 1975, some commentators have suggested that those difficulties arose with the final elimination of minimum commission rates for exchange transactions. Though brokerage commissions for most exchange transactions were theoretically fixed by exchange rules until May 1, 1975, they were, nevertheless, subject to a practical process of negotiation. See, e.g., Securities Exchange Act Release Nos. 11093 (Nov. 8, 1974) and 11293 (Jan. 23, 1975), 40 FR 7403 (Feb. 20, 1975). Of course, Rule 15c1-4 only made explicit, in large part, general disclosure principles with respect to dual agency transactions effected in the over-the-counter market rather than exchange transactions. Because in many instances brokerage commissions for over-the-counter transactions were parallel to those for exchange transactions, it was frequently possible to rely on a blanket statement, to comply with Rule 15c1-4, that a "like" commission was charged the other party. Rule 10b-10 reflects, nevertheless, an effort to accommodate administrative problems but also reflects a view that, in some situations, information as to the commission charged on the other side of a cross is of sufficient importance to the customer to justify the expenditure of the time and effort required.

[39] Experience with Rule 10b-10 and other proposals (see, e.g., proposed Rule 206(3)-2 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 557 (Dec. 2, 1976)) may assist the Commission in analyzing concerns in this area. See also Investment Advisers Act Release No. 581 (Apr. 20, 1977), extending temporary Rule 206A-1 until April 30, 1978.

[40] See, e.g., New York Stock Exchange Rule 391.

[41] "[T]he term distribution is not defined either in the Securities Act of 1933 or in the Securities Exchange Act of 1934 and its meaning and applicability to particular persons in each context should be derived from the differing purposes for which it is used." Matter of Collins Securities Corporation, Securities Exchange Act Release No. 11766 (Oct. 23, 1975). In the context of Rule 10b-10, "a distribution is to be distinguished from ordinary trading transactions and other normal conduct of a securities business upon the basis of the magnitude of the offering and particularly upon the basis of the selling efforts and selling methods utilized." Bruns, Nordeman & Co., 40 SEC 652, 660 (1961). See also 3 Loss, Securities Regulation 1478, 1597 (1961); 6 Loss, Securities Regulation 3673, 3766 (1969); Weiss, Registration and Regulation of Brokers and Dealers 113 (1965).

A number of commentators noted that transactions in connection with distributions, particularly in the case of offerings registered under the Securities Act of 1933, were frequently structured as principal transactions, and, in those cases, dual agency disclosure requirements would not apply. Of course, in the case of offerings registered under the Securities Act of 1933, the final prospectus delivered to the customer should generally set forth the information required by the proviso with respect to source and amount of remuneration. Similarly, tender forms customarily set forth information with respect to fees proposed to be paid to brokers acting as "soliciting dealers." In such situations the information specified in the proviso need not be separately set forth on the confirmation.

[42] Should experience prove to the contrary, however, the provisions of Rule 15c1-4 could be reinstated.

and 23 thereof (15 U.S.C. 78c, 78i, 78j, 78k, 78o, 78q, and 78w), hereby adopts § 240.10b–10 of Title 17 of the Code of Federal Regulations effective January 1, 1978, with the exception of paragraphs (b), (c), (d), and (e), which will be effective on June 1, 1977. The revisions made in § 240.10b–10 as originally proposed are either technical in nature or make less restrictive existing or proposed requirements; accordingly, the Commission finds, pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), that further notice and public procedure are not necessary. The Commission is providing for less than the normal 30-day delay in effectiveness of paragraphs (b), (c), (d), and (e) of the rule in view of the absence of objections to the confirmation relief proposed to be afforded under paragraph (b) and in order to allow brokers an earlier opportunity to begin offering periodic plans under the provisions adopted today.

The Commission also finds that adoption of Rule 10b–10's revised confirmation disclosure and delivery requirements should reduce burdens on competition by making confirmation disclosure requirements applicable to brokers and dealers more uniform and by making available to brokers a simplified confirmation procedure in connection with periodic plans. Furthermore, the Commission finds that to the extent those requirements impose a burden on competition such burdens are necessary and appropriate in furtherance of the purposes of the Act. The timely disclosure to investors of material information affords investors an opportunity to insure that brokers and dealers appropriately carry out obligations to their customers under the federal securities laws.

By the Commission.

GEORGE A. FITZSIMMONS,
*Secretary.*

MAY 5, 1977.

17 CFR Part 240 is amended by adding new Section 240.10b–10 as follows:

**§ 240.10b–10 Confirmation of transactions.**

(a) It shall be unlawful for any broker or dealer to effect for or with the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing

(1) Whether he is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for his own account; and

(2) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request of such customer) and the identity, price and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(3) If he is acting as agent for such customer, for some other person, or for both such customer and some other person,

(i) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that such information will be furnished upon written request of such customer; and

(ii) The amount of any remuneration received or to be received by him from such customer in connection with the transaction unless remuneration paid by such customer is determined, pursuant to a written agreement with such customer, otherwise than on a transaction basis; and

(iii) The source and amount of any other remuneration received or to be received by him in connection with the transaction: *Provided, however*, That if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer.

(b) A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section (until January 1, 1978, § 240.15c1–4 (a)) if:

(1) Such transactions are effected pursuant to a periodic plan; and

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each quarterly period a written statement disclosing each purchase or sale, effected for or with, and each dividend or distribution credited to, or reinvested for, the account of such customer (pursuant to the plan) during the period; the date of each such transaction; the identity, number and price of any securities purchased or sold by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request: *Provided, however*, That the quarterly written statement may be delivered to some other person designated by the customer for distribution to the customer.

(c) A broker or dealer shall give or send to a customer information requested pursuant to this rule within five business days of receipt of the request: *Provided, however*, In the case of information pertaining to a transaction effected more than 30 days prior to receipt of the request, the information shall be given or sent to the customer within 15 business days.

(d) For the purposes of this rule,

(1) "Customer" shall not include a broker or dealer;

(2) "Completion of the transaction" shall have the meaning provided in Rule 15c1–1 under the Act;

(3) "Time of the transaction" means the time of execution, to the extent feasible, of the customer's order;

(4) "Periodic plan" means any written authorization for a broker acting as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940), in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

(e) The Commission may exempt any broker or dealer from the requirements of paragraphs (a) and (b) of this section with regard to specific transactions or specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of the section; any such exemption may be granted subject to compliance with such alternative procedures and upon such other stated terms and conditions as the Commission may impose.

[FR Doc.77–13958 Filed 5–16–77;8:45 am]

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## Title 19—Customs Duties

## CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77–136]

### INSPECTION, SEARCH, AND SEIZURE

### Customs Regulations Amended

AGENCY: United States Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule sets forth Customs policy that unless required by law merchandise should only be seized for Customs violations in those situations in which seizure is necessary to protect the revenue of the United States. A monetary penalty shall be the remedy for violations of laws enforced by Customs unless it is determined that seizure is necessary. These amendments are needed to clarify those situations in which a monetary penalty should be assessed against the violator rather than seizing the merchandise.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.21(a) of the Customs Regulations (19 CFR 162.21(a)) provides that any Customs officer having reasonable cause to believe that any law enforced by the Customs Service has been